

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ERNEST GUARDADO,

Plaintiff,

v.

JAMES DZURENDA, et al.,

Defendant.

Case No. 2:21-cv-00994-GMN-EJY

ORDER

Pending before the Court is Plaintiff's Request for Leave to File Second Amended Complaint (ECF No. 51), which he filed after filing his proposed Second Amended Complaint (sometimes the "SAC"). ECF No. 50. Defendants submitted a Limited Opposition to Plaintiff's Motion (ECF No. 57). The Limited Opposition asks the Court to screen the SAC. *Id.* at 2. The Court grants Plaintiff's request for leave to file his SAC as there is no substantive opposition to him doing so. The Court denies Defendants' request that the SAC be screened.

As stated in *Caballero v. Aranas*, Case No. 3:19-cv-00079-MMD-CLB, 2020 WL 3546853, at *2 (D. Nev. June 29, 2020):

Section 1915A(a) states as follows with respect to screening: (a) Screening.—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The statute could not be clearer as to the timing of the mandatory screening. A court must screen "before docketing, if feasible or, in any event, as soon as practicable after docketing." *Id.* As the Supreme Court has clarified, "[a]ll this may take place before any responsive pleading is filed—unlike in the typical civil case, defendants do not have to respond to a complaint covered by the PLRA until required to do so by the court, and waiving the right to reply does not constitute an admission of the allegations in the complaint." *Jones v. Bock*, 549 U.S. 199, 213 (2007); *see also Nordstrom v. Ryan*, 762 F.3d 903, 906, 907 & n.1 (9th Cir. 2014) (characterizing screening under § 1915A as the "pre-answer screening stage").

The court in *Caballero* further states that "if the Court dismisses an initial complaint and grants leave to amend, the Court will screen the amended complaint filed. This practice falls within the PLRA's mandate for 'early judicial screening.'" *Id.* at *3 *citing Jones*, 549 U.S. at 223. In contrast, whether

1 to screen a second amended complaint-post answer, such as is the case here, is decided “on a case-
 2 by-case basis.” *Id.* See also *Peck v. Nevada*, Case No. 2:18-cv-00237-APG-VCF, 2020 WL
 3 5518605, at **1-2 (D. Nev. Sept. 14, 2020). The Court finds screening the SAC is not appropriate.
 4 First, as stated above, the Court notes that Defendants assert no substantive objection to Plaintiff’s
 5 SAC. Second, the Court screened Plaintiff’s First Amended Complaint that was answered by
 6 Defendants who have appeared. ECF Nos. 15, 70. A second screening is neither warranted nor a
 7 reasonable use of limited judicial resource.

8 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Request for Leave to File Second
 9 Amended Complaint (ECF No. 51) is GRANTED.

10 IT IS FURTHER ORDERED that Defendants’ request that the Court screen the Second
 11 Amended Complaint is DENIED.

12 IT IS FURTHER ORDERED that all Defendants named in the Second Amended Complaint
 13 (ECF No. 50) who have appeared in this action must file a responsive pleading no later than **July**
 14 **18, 2022**.

15 IT IS FURTHER ORDERED that the Attorney General for the State of Nevada shall file a
 16 Notice with the Court, no later than **July 25, 2022**, advising whether he will accept service of the
 17 Second Amended Complaint on behalf of those defendants who have not appeared. This includes
 18 D. Thompson, who was served the First Amended Complaint but has not filed a responsive pleading,
 19 Richard Snyder, Defendant Rivera, Defendant Barth (or Berth), Defendant McKennon, and
 20 Defendant Garcia.

21 IT IS FURTHER ORDERED that for any named Defendant for whom the Attorney General
 22 cannot accept service, he must file under seal, without serving Plaintiff, the last known address of
 23 such Defendant no later than **July 25, 2022**. If the last known address is a post office box, the
 24 Attorney General must, to the best of his ability to do so, provide an address at which such Defendant
 25 may be served.

26 DATED this 9th day of June, 2022.

27 
 28 ELAYNA J. YOUCHAK
 UNITED STATES MAGISTRATE JUDGE